with reference to the usage. WILLISTON ON CONTRACTS, § 660. The party seeking to establish the usage must show the other was aware of the usage or that the usage was so well defined and so generally adopted by those in the trade, that he ought to have known of it. *Rostetter* v. *Reynolds,* 160 Ind. 133; *Black* v. *Ashley,* 80 Mich. 90. Whether the usage exists is a matter of fact for the jury, as also is the question whether the parties have adopted the usage. *Chicago Co.* v. *Tilton,* 87 Ill. 547; *Scott* v. *Brown,* 60 N. Y. S. 511. In the principal case the trade usage alleged by P complies with the requirements of reasonableness and legality and was known to D. For nine months D conformed to the usage. This was evidence of the usage as well as of D's knowledge and intention of contracting subject to the usage. The court and jury properly found that the usage existed, was adopted by the parties and became a part of their contract.

CONTRACTS—"INFORMATION" AS THE CONSIDERATION FOR A CONTRACT.—Plaintiff told defendant's officials that he had acquired information which would be of great value if used in the operation of defendant railroad. Thereupon the officials agreed that if plaintiff would submit his proposition and if the same was acted upon they would pay plaintiff 5% of the proceeds. Plaintiff submitted his proposition, to-wit: "The selling of advertising space in railroad stations, cars, etc." Although the road had been in operation several decades, this idea had never occurred to the defendant's officials as a source of revenue. The idea was used and advertising space sold with profit, but defendant refused to pay plaintiff his commissions. In an action on the contract, *held,* the contract was fatally defective for want of consideration. *Masline* v. *N. Y., N. H. & H. R. Co.* (Conn., 1921), 112 Atl. 639.

This is a case of first impression, though the applicable underlying principles are well settled. The court's decision is based on the theory that when one offers "information" as consideration for a contract the information must consist of nothing less than *new* ideas, not known to the promisor and not generally known to the world at large. But since selling advertising space for profit is a well known commercial enterprise, the plaintiff had proferred nothing more substantial than a "bare idea," valueless as consideration. As authority to substantiate its position the court cited *Stein* v. *Morris,* 120 Va. 390, and *Bristol* v. *Equitable Life Assurance Society,* 5 N. Y. Supp. 131, but in each of these cases the plaintiff was seeking to protect an idea *as property* against its use by one who, having fortuitously learned of the idea, used it. No question of contract was involved and hence the decisions cannot properly be regarded as decisive of the facts of the principal case. Considerable reliance was also placed upon synonyms given for "information" in Murray's "New English Dictionary," namely "news" and "intelligence." But synonyms are dangerous and must be used with caution. A far more accurate definition is the one actually given for the word in the same source, namely, "Information is that which one is told." Everyday usage treats the term in this light, and non-technical terms in contracts should

be given a construction in accord with common usage. Such a strained construction of the word permits the promisor to obtain relief against his own lack of foresight. Although actually intending to pay for whatever suggestions of value the plaintiff may make, he can refuse to pay, if, when the suggestions are received, he finds that, had he been more alert himself, he might have been the author of them. Yet it is elementary that a court will not permit the adequacy of consideration to be questioned so long as it is regarded at the time of the making of the contract as the equivalent of the promise. *Haigh* v. *Brooks,* 10 A. & E. 309. Furthermore the actual value of the information imparted in the principal case is a cogent argument in favor of applying the ordinary rules of construction and the ordinary laws of consideration to "information" and treating it as sufficient, whether composed of commonly known ideas or not, if actually given as the equivalent of the promise.

CONTRACTS — SUBSTANTIAL PERFORMANCE OF CONDITION PRECEDENT. — P agreed to build a residence for D, final payment to be preceded by architect's certificate. Specifications for plumbing work called for all wrought iron pipe to be well galvanized, lap welded, of the grade known as standard pipe of "Reading" manufacture. Nine months after the work was finished, but before final payment, D discovered that some of the pipe used was of other than "Reading" manufacture. The departure from specifications was due to unexplained fault of a subcontractor. The pipe used was equal in every way to "Reading" pipe. Architect's certificate was refused until the deviation from the contract should be remedied, which would involve great expense. P brought action for balance due. *Held,* allowance for breach should be not the cost of replacement, but the difference in value which would be nominal. *Jacob & Youngs* v. *Kent,* (N. Y., 1921), 129 N. E. 889.

The rule of substantial performance has been variously stated but in essence is to the effect that the breach must not be such as to interfere seriously with the contract purpose. *Anderson* v. *Pringle,* 79 Minn. 433. In the principal case it is hard to perceive any purpose, reasonable or unreasonable, which was defeated by the absence of the "Reading" trade-mark. The breach must not be fraudulent, willful, or intentional; the contractor must make an honest attempt to perform exactly. *Ashley* v. *Henahan,* 56 Ohio St. 559. But one case has been found in which negligence alone has been held to preclude recovery, and in that case the entire contract was negligently performed. *John R. Carpenter Co.* v. *Ellsworth,* 136 N. Y. Supp. 108. With due deference to the dissenting opinion in the instant case, which was based chiefly upon P's negligence as constituting bad faith, it is submitted that in the great majority of cases where contracts have been held substantially performed the breaches have been due to negligence. The inference would seem almost unavoidable that in performing a contract including thousands of specifications the contractor has made an honest effort if he has failed in only one detail and that failure involving no benefit to himself. The allowance to be made for the breach, as sometimes stated, is the amount required